

KEVIN P. ALLEN, State Bar No. 252290  
[kallen@aghwlaw.com](mailto:kallen@aghwlaw.com)  
ALLEN, GLAESSNER, HAZELWOOD & WERTH, LLP  
180 Montgomery Street, Suite 1200  
San Francisco, CA 94104  
Telephone: (415) 697-2000  
Facsimile: (415) 813-2045

Attorneys for Defendants  
CITY OF SUNNYVALE and OFFICER JOHN  
BOGNANNO

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

JOHN DOE,

Plaintiff,

v.

DEPARTMENT OF JUSTICE OF THE  
STATE OF CALIFORNIA, et al.,

Defendants.

Superior Court of Santa Clara Case No.  
22CV405055

**NOTICE OF REMOVAL OF ACTION  
UNDER 28 U.S.C. § 1441 (FEDERAL  
QUESTION); DEMAND FOR JURY TRIAL**

**TO THE CLERK OF THE COURT AND ALL COUNSEL OF RECORD:**

PLEASE TAKE NOTICE that defendants CITY OF SUNNYVALE and OFFICER JOHN BOGNANNO (“Defendants”) hereby remove to this Court the state court action described below.

**THE REMOVED ACTION**

1. On September 30, 2022, an action was commenced in the Superior Court for the County of Santa Clara, entitled *John Doe vs. Department of Justice of the State of California, et al.*, Santa Clara Superior Court case number 22CV405055. A copy of said complaint is attached hereto as **Exhibit “A”** to the concurrently-filed Request for Judicial Notice (“RJN”). Said complaint listed four defendants: Department of Justice of the State of California; State of California; City of Sunnyvale; and Ofc. John Bognanno. Said complaint listed various allegations, including: (1) Fourth Amendment unlawful arrest under 42 U.S.C. § 1983; and (2)

1 *Monell*<sup>1</sup> liability under 42 U.S.C. § 1983. The federal allegations are alleged against removing  
2 defendants City of Sunnyvale and Officer John Bognanno.

### 3 **REMOVAL IS TIMELY**

4 2. Defendants City of Sunnyvale and Officer John Bognanno were served with the  
5 Summons and Complaint on November 14, 2022, via personal service. To-date, an executed copy  
6 of the Proofs-of-Service of Summons do not appear on the Santa Clara County Superior Court  
7 website for Case No. 22CV405055.

8 3. This removal is timely. A defendant's 30-day period to remove an action to federal  
9 court runs from the formal date of service of process. *Murphy Bros., Inc. v. Michetti Pipe*  
10 *Stringing, Inc.*, 526 U.S. 344, 350 (1999) ["one becomes a party officially, and is required to take  
11 action in that capacity, only upon service of a summons or other authority-asserting measure  
12 stating the time within which the party served must appear and defend," not by mere receipt of  
13 the complaint unattended by any formal service]. Additionally, pursuant to Federal Rule of Civil  
14 Procedure Rule 4 (c)(1), service of an action requires a summons be served with a copy of the  
15 complaint. Here, Plaintiff personally served City of Sunnyvale and Officer John Bognanno on  
16 November 14, 2022. Thirty days after November 14th is December 14, 2022.

17 Defendants removed on Tuesday, December 13, 2022 – within the 30-day window.

### 18 **GROUND FOR REMOVAL**

19 4. This action is a civil action of which this Court has original jurisdiction under 28  
20 U.S.C. §§ 1331 and 1343, and is one which may be removed to this Court by Defendants pursuant  
21 to the provisions of 28 U.S.C. § 1441, in that Plaintiff asserts causes of action against them  
22 concerning federal constitutional rights (*e.g.*, Fourth Amendment) Removal is permitted based  
23 upon federal-question jurisdiction.

### 24 **VENUE ASSIGNMENT**

25 5. Venue in this Division of this Court is proper because the events underlying the  
26 allegations in the Complaint took place in the County of Santa Clara, California.

27  
28 <sup>1</sup> *Monell v. Dept. of Social Services*, 436 U.S. 658 (1978).

**THE SERVED DEFENDANT CONSENTS TO REMOVAL**

6. The only other two defendants in this case -- Department of Justice of the State of California and the State of California -- have been served. Both consent to removal.

**PAPERS FROM REMOVED ACTION**

6. Pursuant to 28 U.S.C. § 1446(a), copies of all process, pleadings, and orders served on Defendants -- and not already included above, are attached as **Ex. "B"** to RJN.

7. Pursuant to 28 U.S.C. § 1446 (d), Defendants will serve on Plaintiffs and will file with the Clerk of the Superior Court for the County of Santa Clara, a written notice regarding removal of this action, attaching a copy of this Notice of Removal and all supporting papers.

**DEMAND FOR JURY TRIAL**

Defendant hereby demands a jury trial in this matter.

Dated: December 13, 2022

ALLEN, GLAESSNER,  
HAZELWOOD & WERTH, LLP

By: s/ Kevin P. Allen  
KEVIN P. ALLEN  
Attorneys for Defendants  
CITY OF SUNNYVALE and OFC. JOHN  
BOGNANNO